any time before his suit comes to judgment, would put the property beyond execution. The principal case enables both principles to operate. It is not open to the objection that it allows a creditor to discover the state of affairs from the bill itself, to begin suit, obtain judgment and to levy execution before the order of appointment, for the interim will be made too short to permit such a result. This, it is true, where no restraining order was granted, would still leave the property open to attachment; but, such process issues only on some prescribed statutory ground, e. g., that the debtor is about to make some fraudulent disposition. Such attachment merely protects one, with no detriment to the other creditors, for the fraud would equally harm them under the receiver. Upon all these considerations, it is submitted that the decision of the principal case is the sounder, and is attended with less inconvenent results.

NEGOTIABILITY OF JOINT STOCK ASSOCIATION BONDS EXEMPTING SHAREHOLDERS' LIABILITY.—At common law, a joint stock association is a partnership. *Griffith* v. *Paget* (1877) L. R. 6 Ch. Div. 511; *Townsend* v. *Goewey* (N. Y. 1838) 19 Wend. 424. As in a simple partnership, *Haskins* v. *D'Este* (1882) 133 Mass. 356, the contracts of the association are the contracts of its members, *Tappan* v. *Bailey* (Mass. 1842) 4 Metc. 529; *McGreary* v. *Chandler* (1870) 58 Me. 537; contra, *Walker* v. *Wait* (1878) 50 Vt. 668, upon which they are primarily liable. *Keasley* v. *Codd* (1826) 2 C. & P. 408; *Skinner* v. *Dayton* (N. Y. 1822) 19 Johns. 513. It is not inconsistent with the general nature of the partnership that the death of a member does not work a dissolution, *McNeish* v. *Hulless Oat Co.* (1884) 57 Vt. 316, or that its shares are transferable. *Edwards* v. *Warren etc. Works* (1897) 168 Mass. 564. Whether statutes adding further corporate features have created a new juridical person, depends upon the nature of the legislation. If the statutory features are inconsistent with the conception of a partnership, the legislature is assumed to have created an artificial entity or quasi-corporation. Such is the limited company of England and some of the States. *In re Reese etc. Co.* (1867) 36 L. J. Ch. 618, 623; *Oak Ridge Co.* v. *Rogers* (1884) 108 Pa. 147; *Staver etc. Co.* v. *Blake* (1896) 111 Mich. 282. For jurisdictional purposes on the ground of diverse citizenship, it fails to qualify as a corporation, *Great Southern Hotel Co.* v. *Jones* (1900) 177 U. S. 449, but the Supreme Court shows a reluctance to extend the privilege of a corporation rather than a refusal to recognize the artificial person, and the association may sue in its own name when jurisdiction is invoked on other grounds. *Sanitas Co.* v. *Force Co.* (1902) 124 Fed. 302. On the other hand, if the statutory provisions are procedural, intended only to afford a convenient remedy, the fundamental nature of the association remains unchanged. *Gott* v. *Dinsmore* (1872) 111 Mass. 45. The New York associations seem to fall within this category. *People* v. *Coleman* (1892) 133 N. Y. 279; *Chapman* v. *Barney* (1888) 129 U. S. 677. While for some purposes the association or its officer, has been considered a corporation, as in the adjustment of claims between the association and shareholders, *Westcott* v. *Fargo* (1875) 61 N. Y. 542, service of process in a foreign state, *State*

v. *Adams Express Co.* (1896) 66 Minn. 271, or for taxation, *People* v. *Wemple* (1889) 117 N. Y. 136; *Matter of Jones* (1902) 172 N. Y. 575, the important distinction has not been obliterated that the contracts and debts of the association are the original contracts and debts of the shareholders as partners. *People* v. *Coleman, supra; Snyder* v. *Lindsey* (N. Y. 1895) 92 Hun 432; *United Press* v. *Abell Co.* (N. Y. 1903) 87 App. Div. 344. This view of the New York association is taken by the Massachusetts courts. *Taft* v. *Ward* (1871) 106 Mass. 518; contra, *Edgeworth* v. *Wood* (1896) 58 N. J. L. 463. Since the Code, Code Civ. Proc. §§ 1919-1924, authorizes only such suits against the officer as would be enforcible against the shareholders, *McCabe* v. *Goodfellow* (1892) 133 N. Y. 89, and permits suits against the members in the first instance, *Schwartz* v. *Wechler* (N. Y. 1892) 2 Misc. 67, it would be difficult to define a shareholder's liability, if the association is to be considered an artificial person. It is not in the nature of a suretyship nor of course is it statutory. This difficulty was ignored by the majority in the recent case of *Hibbs* v. *Brown* (N. Y. 1907) 82 N. E. 1108. The question at issue was the negotiability of a bond of the Adams Express Co. containing a stipulation that "no shareholder shall be liable as partner or otherwise in respect to this bond," under the rule that a negotiable instrument must pledge the general credit of the maker. Four justices took the view—a view undoubtedly in accord with commercial conceptions, but, it is submitted, a departure from the present legal conceptions—that the bonds are the obligations of an artificial person distinct from the shareholder, whose liabilities are secondary.

Adopting this conception, the negotiability of the bonds logically follows. The case of *Heflin etc. Co.* v. *Hilton* (1899) 124 Ala. 365, cited for the proposition that the note of a corporation not enforcible against stockholders is non-negotiable, 7 Cyc. 578, does not support that proposition, nor is the proposition sound upon principle. The rule that the instrument must pledge the general credit of the maker, *Munger* v. *Shannon* (1874) 61 N. Y. 251, is the converse of the rule that the promise must not be to pay out of a particular fund. If, therefore, a maker pledges all his funds without limitation, this rule is satisfied. The test is the resources of the debtor, not the resources upon which the creditor may call. The exemption of a superadded credit of a third party, as that of a general surety for the debts of the maker, or the secondary liability of the stockholders of a corporation to third parties, would not be a restriction upon the general credit of the maker. The fact that the general credit of a partnership is the credit of its members is not inconsistent with this rule, for, though the partnership may not draw upon the partners to the full extent of their resources, the contracts of the partnership are the contracts of the partners and, therefore, must pledge their individual credit. If, therefore, a joint stock association contracts as a quasi-corporate entity, a limitation upon the shareholders' liability does not destroy the negotiability of its paper; if it contracts as a partnership, the limitation is fatal. See *Hess* v. *Werts* (1818) 4 Sarg. & R. 356.

The minority, rejecting the entity theory, preserve the negotiability of the bonds by declaring the stipulation void. On grounds of public

policy, a limitation on the liability of partners has been generally looked upon with disfavor, *Imperial Co.* v. *Jewett* (1901) 169 N. Y. 143; *Hess* v. *Werts, supra,* but recognized if third parties choose to contract on such terms and an enforcible right remains. *Bank of Topeka* v. *Eaton* (1900) 100 Fed. 8. Since the Code provides no remedy not enforcible against the shareholders, *supra,* and the stipulation gives the shareholders immunity from suit, the position of the minority which gives effect to the primary intention to make a binding contract, seems sound, and it is more logical to base this position, as Werner, J., did, upon the ground that the stipulation was repugnant to the general tenor of the bond, than upon the broad ground of public policy.

VALUATION OF THE PROPERTY OF PUBLIC SERVICE COMPANIES.—When the property of a public service company is taken by a state or municipality under condemnation proceedings, *Matter of Brooklyn* (1894) 143 N. Y. 596, or under contract leaving the purchase price to be subsequently determined, *Matter of Water Com'rs* (N. Y. 1902) 71 App. Div. 544, the problem of ascertaining the fair and just compensation has proven to be most vexatious and one upon which the courts have shown no little divergence of opinion. Several theories, none of them exclusive, have been advanced: first, the original cost of the plant to the company; *Montgomery County* v. *Schuylkill Bridge Co.* (1885) 110 Pa. St. 64; *West Chester etc. Co.* v. *Chester County* (1897) 182 Pa. St. 40; second, the present cost of reproduction; *Brunswick etc. Water Dist.* v. *Maine Water Co.* (1904) 99 Me. 371, 382; *Matter of Water Com'rs, supra;* third, the capitalized value of its net income; *Nat'l Water Works Co.* v. *Kansas City* (1894) 62 Fed. 853; and fourth, the market value of its stock. *Mifflin Bridge Co.* v. *Juniata County* (1891) 144 Pa. St. 365; *Montgomery County* v. *Schuylkill Bridge Co., supra.* The first consideration—that of original cost—has received considerable attention from the courts. In order, however, for it to have any bearing upon present value, the extent of depreciation of the plant must be considered; *Kennebec Water Dist.* v. *Waterville* (1902) 97 Me. 185; moreover, there must be assurance that there were no fraudulent transactions and that the money was legitimately and wisely spent in the construction. *Brunswick etc. Water Dist.* v. *Maine Water Co., supra.* In the few cases in which original cost is considered to be the controlling element, the value of the franchise is added. *Montgomery County* v. *Schuylkill Bridge Co., supra; Clarion Turnpike Co.* v. *Clarion County* (1896) 172 Pa. St. 243; *West Chester etc. Co.* v. *Chester County, supra.* The objection to this test is that it may force the State to pay for an antiquated plant an amount greatly exceeding the cost of a modern and more efficient system. The second test—cost of reproduction—has received less consideration from the courts, seemingly on account of its severity; see, *Matter of Water Com'rs* (1903) 176 N. Y. 239, and in some cases has been entirely rejected. *Montgomery County* v. *Schuylkill Bridge Co., supra; Metropolitan Trust Co.* v. *H. & T. C. Ry. Co.* (1898) 90 Fed. 683. Value is thus determined in the competitive business field, but this rule is less applicable to public service callings because the capital can generally be less easily diverted